

**ADEPT**  
**Legal Commentaries**

July 2004

## Parliament activity, July 5-9, 2004

13 July 2004

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This week Parliament continued examining draft laws submitted by the Presidency as well as several draft laws aimed at improving the situation in agriculture.

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### I. Law on Single Tax in Agriculture

**ADEPT Comment:** The law provides for establishing a single tax in agriculture, which is to be tested in a pilot project in Taraclia rayon. The single tax would include the income tax, VAT (except for VAT on imports), taxes on real estate, taxes to road fund, tax on water and territory planning. The other taxes and fees, not subject to this law, shall be paid according to the law. The law defines the subjects of the law, tax quota and exemptions.

(For more details see [Parliament Activity June 7-11, 2004](#))

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### II. Law on the Subsidized Insurance of Risks of Agricultural Production

**ADEPT Comment:** During the final reading of the law opposition suggested that state should cover 60% of the insurance. As they failed to provide solid arguments in support of their position, majority faction rejected the suggestion arguing that opposition could have operated the amendment while it was in power.

The importance of the law stems from the fact that Moldovan agriculture is very much buffeted by natural calamities. That is why insurance market in this field is practically absent - insurances in agriculture accounts for only 2% of the total insurance market, and this despite the fact that agriculture is the future of the country's economy. So far, state's assistance to farmers upon natural calamities has been quite meagre.

The law aims at establishing a transparent mechanism of boosting insurance in agriculture so as to bring stability in agriculture development. The law defines insured risk as any natural calamity that incurs a damage to farms or fisheries, or any other unfavourable event producing damages. Preliminary estimates have indicated that allocations from state budget worth 40 million Lei are necessary for subsidizing insurance of the risks of agricultural production, with 15 million Lei needed in the first year.

(For more details see [Parliament Activity June 7-11, 2004](#))

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### III. Law on the Modification of Legal Acts on Minors Leaving the Country

**ADEPT Comment:** The law was developed at the initiative of the President and made passport compulsory for minors when leaving the country, as well as consent of both parents whenever the child is leaving for permanent resident in other country. Under the law, any citizen may get a passport even upon birth (currently only children older than 10 are entitled to passport).

The law is intended to prevent traffic of minors. Christian-Democrats objected the amendments on the grounds they would put additional financial burden on the parents. They also accused ruling party of trying to secure as many revenues to the state budget in view of upcoming electoral campaign.

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#### **IV. Law on Approving Regulation on Badge and Identity Card of the Elected Officer**

**ADEPT Comment:** Parliament approved the sample and regulation on elected officer's identity card and badge. Identity card is the main document confirming the prerogatives of the elected officer as an official person on the soil of the first or second level administrative-territorial unit. Under the law, both identity card and badges shall be produced by the Government and issued to elected officials: mayors (for local councillors and deputy mayors); Chairperson of the rayon (for rayon councillors, rayon mayors and rayon deputy Chairs); Prime-Minister (for rayon Chair, Mayors of Chisinau and Balti).

Several objections were voiced with regard to translation of the documents into English. For the second reading deputies agreed that the document should be only translated into Russian.

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#### **V. Resolution on approving the structure of the General Prosecution**

**ADEPT Comment:** Under the resolution the following are to be part of the Prosecution General:

- Prosecutor General
- Senior Deputy of the Prosecutor General
- Deputies of the Prosecutor General
- Prosecutor General Apparatus
- Department of enforcement of penal investigation
- Department of conducting penal investigation
- Control department over penal investigation
- Legal Department
- General Investigation Department
- Administrative and Financial Department
- Prosecutors for special missions
- HR Department
- Internal Security Department
- Personnel Training Department.

Organizational chart, internal structures, roles and responsibilities of each department shall be outlined in the Prosecutor General's decision. During the hearing in Parliament it was mentioned that 30% of the employees from the central apparatus are to be reduced and transferred to regional or specialized structures of the Prosecution Office.

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## **VI. Resolution on enforcing state budget for 2003**

**ADEPT Comment:** The Report on enforcing state budget for 2003 was approved via the said resolution, namely:

- revenues worth 4573,3 million Lei;
- expenditures worth 4255,1 million Lei; surplus in revenues over expenditures worth 318,2 million Lei.

The report indicates continuous economic growth, a 6.3% GDP growth over 2002 or 27,297 million Lei. On the other hand, budgetary and fiscal policies promoted by the Government throughout 2003 produced a smaller impact than expected. Thus, budget fell short of 95.9 million Lei, namely:

- Excises on petrol and diesel budget line felt short of 47.5 m Lei (89% of the forecast);
- Excises on wine, cognac budget line felt short of 23.9 m Lei (37.2%).

State budget provided for transfers of funds for territorial development worth 708.3 m Lei, however only 89.2% of the budgeted amount was transferred. Some of the allocations were un-proportionally distributed, for instance Balti Municipality and Gagauz Yeri received 100% of the funds, whereas other regions only 78%.

To address the shortcomings identified the Government is to take certain measures:

- to develop and approve a single mechanism of concentrating all financial sources including extra-budgetary funds to the revenues item of the state budget;
  - to spend the reserve fund of the Government as provided for;
  - to monitor capital investments;
  - to take measures to reduce domestic and foreign debt, etc.
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## **VII. Draft Enforcement Code**

**ADEPT Comment:** Draft Enforcement Code was passed in the first reading on November 23, 2000 and was to be worked out for the second reading. Hence, a number of important acts were passed: Civil Code, Penal Code, Code of Penal Procedure, Code of Civil Procedure, Labour Code, etc. Meanwhile, the draft was submitted for expertise at the Council of Europe and other relevant bodies.

The draft of the Enforcement Code examined by the Parliament was different from the initial one, which was passed in the first reading. Hence, it was decided to revote the text, it included two chapters:

- **Chapter I** - Enforcement of civil rulings;
- **Chapter II** - Enforcement of penal rulings.

The Code includes 330 articles and refers to: independence of the executors and the status of the officers of the Department of enforcement and executors, penalty for the failure to comply with the requirements of the judicial executor; establishing Complaints Department thereby civil society will monitor how legal provisions are enforced.

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## **VIII. Draft law on precious metals and gems**

**ADEPT Comment:** The draft passed in the first reading outlines the state policy in the field and state control over production, use and circulation of precious metals and gems. The law defines such notions as precious metal, gems, ingot, jewellery items, jewellery, scraps containing precious metals, scraps containing precious metals and gems.

The draft also provides for: state goal, tasks, and control over activities involving precious metals and gems; rights and obligations of the legal and natural entities working with precious metals and gems; state treasury of precious metals and gems; production, processing, use and circulation of precious metals and gems.

The draft seeks to define the legal framework in the field of precious metals and gems, establish a level playing field for all the businesses, and regulate the market. Currently the market is flooded with smuggled items of questionable quality with no state mark applied, which are sold at lower prices than the domestically manufactured ones.

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## **IX. Draft on indemnities for temporary inability to work and other social payments**

**ADEPT Comment:** The draft passed in the first reading envisages the social insurance fund. The law provides for unifying all the types of social assistance, such as indemnity for temporary inability to work; maternity indemnity, indemnity for raising a child or raising a seek child; unemployed aid, etc.

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## **X. Draft law on amnesty on the tenth anniversary of adopting the Constitution of the Republic of Moldova**

**ADEPT Comment:** The draft is yet another initiative of the President of the Republic of Moldova. On July 29, 2004 we would celebrate tenth anniversary of the Constitution. On this occasion it is recommended to amnesty convicts. The law outlines the category of convicts subject to amnesty such as minors, pregnant women, 1 and 2 degree handicapped, and persons older than 69 years of age. Also the law provides for reducing the term of conviction provided material damages are redressed.



It is expected that the move would somehow improve the situation in the penitentiary system, which is overcrowded and under funded.

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#### **XI. Draft law on electronic document and digital signature**

**ADEPT Comment:** Again the draft is an initiative of the Presidency. It seeks to establish legal conditions for the circulation of e-documents and digital signatures. The law shall regulate social relations between legal and / or natural entities upon creating, transmitting, receiving, storing and other use of e-documents and digital signatures including when making transactions, payments, as well as other cases provided by law. The law defines such notions as private key, public key and e-document.

It is expected that the e-document would be used by legal and natural entities in all the fields. Also, several norms are to be introduced with regard to electronic circulation of the documents, legal force of the digital signature, certification of public keys and digital signatures, state control in the field, etc.

## **Parliament activity, July 19-23, 2004**

29 July 2004

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During July 22 session both Communist faction in Parliament and Christian-Democrats commented on the situation around Moldovan schools in Transdnistria. The latter accused Russian Federation of supporting Tiraspol, whereas communist leader in Parliament dubbed Tiraspol actions as banditries. The third faction in Parliament headed by Dumitru Braghis submitted for examination a draft official declaration to be issued the Parliament, however majority faction replied it was too early for the legislature to make such kind of declaration as long as the President of the country and Government had already voiced their standpoints and undertook all the necessary steps to settle the issue.

During the aforesaid session, deputies examined more than 20 draft laws that were already examined in the first reading and were to be adopted by the end of the summer session.

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### **I. Law on Granting Information and Security Service the Right to Baking Information**

**ADEPT Comment:** Although the draft was severely criticised during the first reading, majority faction decided to amend the Law on Banking Institutions and the Law on Commercial Secret. Under the current law, bank administrators, officials and agents are obliged to keep the commercial secret and are prohibited from using information they handle while exercising their work duties in their own interest or in the interest of a third party.

This kind of information may be only submitted to National Bank, its inspectors, accounting experts and authorized accountants, legal bodies, Court of Accounts, Centre for Combating Crime and Corruption, fiscal bodies, as is provided by law, as well in cases when in order to represent bank interests in court commercial secrets should be disclosed.

Commercial banks are obliged to submit legal bodies information on accounts considered doubtful according to normative acts issued by the National Bank. However, under the law passed by the Parliament the list of organizations to be notified includes Information and Security Service as well. The reason behind this decision is to track suspicious transactions, fight money laundering and undercut funding of terrorist organization so as to ensure state security.

Experts say besides controlling financial flows and fighting money laundering, these amendments would enable ISS to collect information and even interfere into the activity of businesses competing with those controlled or hold by state officials.

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### **II. Law on the Amendment of Legal Acts on Privatization of Enterprises in Energy Sector**

**ADEPT Comment:** Current law provides that upon distribution of enterprises distributing electricity, at least 75% + 1 shares were to be auctioned. This enabled investors to control the company and administer it according to their own plans.



However, under the recently passed amendments up to 50%+1 of the shares are to be auctioned. This enables the state to hold the enterprise under control. The move was inspired by the on-going conflict between authorities and "Union-Fenosa", owner of RED Centre and Red-South Distribution Networks. Measures undertaken by the company leadership constantly trespassed on Chisinau authorities' interests, which oppose raising tariffs on electricity and disconnecting consumers for the failure of payment. Noteworthy, the disputes between Union-Fenosa and Government led them to the court. That in turn determined international organisations to interfere on the grounds that wielding heavy pressure on investors was illegal and inadmissible. Although there is much ado about governors' fault who struck the deal on privatising distribution networks for much lower prices, even a resolution of the Court of Accounts being issued as regards terms of privatization, so far no official person was held liable, the governing preferring to harass the investor in an attempt to protect the interests of social-vulnerable strata.

Probably to avoid similar situations in the future, specifically in the case of North and North-West Distribution Networks governing came up with a new procedure.

Noteworthy, several tenders have been held already for the privatization of distribution networks in state property, however all of them unsuccessful because of the low bids. Given that investors are offered an even lower share package, it is very unlikely that many of them would be interested in bidding, which in the long run would allow monopolists such as RAO ES of Russia to buy assets at low prices.

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### **III. Law on the Amendment of the Law on Acquisition of Goods, Works and Services for the State Needs**

**ADEPT Comment:** The amendments are aimed at decentralizing the mechanism of public acquisitions. National Agency for Public Acquisitions, which currently approves all the transactions, shall from now on only call the bids, examine acquisitions from a single source and examine complaints and litigations in the field. As for the rest of responsibilities, they shall be delegated to the organizations engaged in the acquisitions.

On the one hand the simplified mechanism might be useful to boost the responsibility of administrators in managing public funds, as they would no longer be able to blame the Agency for any irregularity found. On the other hand, given the lack of proper control and high rates of staff turnout it may well happen that certain administrators would be tempted to exploit their position to their own benefit and it would be too late for the Agency to interfere. On top of this, the personnel lacks training especially in the territory.

It would be possible to assess the law enforcement only after Court of Accounts undertakes several controls.

#### **IV. Law on Ratifying Amendments to Agreement on Development Credit**

**ADEPT Comment:** The Agreement ratified by the Parliament amends the previous agreement concluded between Republic of Moldova and US Agency for International Development, providing for a 10.5 million USD credit. The project includes three major components: rural extension services; rural business development services; rural financing. Amendments to the Agreement ratified by the Parliament, entitled "Investments in Rural Services", envisages additional 5 million USD with a 40 year reimbursement term and a ten years grace period at 0.75% annualized interest rate.

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#### **V. Law on Ratifying Agreement on Development Credit - Social Investment Fund of Moldova**

**ADEPT Comment:** Government signed an Agreement worth a 20 million USD credit for implementing the second Social Investment Fund project. The project's objectives are to channel resources to the poor people in villages; contribute to human and social capital development by means of providing better social and economic services to poor communities and strengthen the capacity of local institutions.

Government shall receive the credit with a 40 years reimbursement term and 10 years grace period at a 0.75% interest rate. The project is for a five year term and shall be targeted at:

- 280 villages that did not implement projects within FISM I and were identified;
- 120 villages that implemented projects during FISM I project;
- 42 small towns;
- vulnerable strata of the society (elderly, women, youth, children, etc) in six rayons of the country (30 sub-projects for establishing innovative social assistance services).

The two credits secured by the incumbent ruling indicate a new reality, so far ruling party has claimed it was governing the country for three years in a row without any foreign assistance, however the reality is totally different - at the beginning of ruling they received a considerable credit that enabled them to preserve balance of payments. Later on, a number of credit and grant agreements were concluded and together with the two recently ratified ones, totals 10 million USD. Therefore, claims that that the country is doing quite well solely because it had tightened its belt, economic recovery and GDP growth, are not exactly true.